

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 5493 of 2006 (O&M)
Date of decision : 18.12.2006

M/s United India Insurance Co.Ltd.

....Appellant

Versus

Smt. Harbans Kaur & others

...Respondents

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.R.K.Bashamboo, Advocate
for the appellant.

...

UMA NATH SINGH,J(O)

This F.A.O. arises out of an award dated 30.8.2006, passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Ambala in MACT Case No.126/11.6.2005, awarding a sum of Rs.2,68,500/- along with interest @ 7.5% per annum in death case of a young man of 25 years said to be driving motorcycle of a neighbour.

It appears that on 5.3.2005 at about 7.30 p.m. deceased Lakhwinder Singh was driving motorcycle bearing No.HR-01Q-7662, owned by his neighbour Inderjit Singh, when the accident took place on account of slipping of that vehicle near Railway-Crossing, Shahpur. The deceased was found lying on the road with the motorcycle. He was shifted to Civil Hospital, Ambala Cantt. and when his condition further deteriorated, he was shifted to PGI, Chandigarh on 6.3.2005. During the course of treatment he

succumbed to the said injuries on 8.3.2005. It appears from the evidence that the deceased was not related to the owner of the motorcycle and the appellant-insurer has not taken any objection in the written statement to contend to the contrary. Under these circumstances, in respect of the vehicular death of the deceased a claim in the sum of Rs.8 lakh was laid before the Tribunal.

The Tribunal on a careful scrutiny of evidence on record has come to the conclusion that the claimants being parents were entitled to receive aforesaid compensation amount under the provisions of Section 163-A of the Motor Vehicles Act (for short 'the Act').

Learned counsel for the appellant herein assailed the award by submitting that the deceased was not a third party in terms of the conditions of policy. Moreover, he also submitted that the provisions of Section 163-A of the Act are to apply only if a person is a third party and not a tort-feasor himself. He further contended that Section 163-A has to be read jointly with the provisions of Section 166 of the Act. Learned counsel has placed reliance on the judgments of two High Courts, namely – (i) Andhra Pradesh High Court reported in **1995 ACJ 600** (United India Insurance Co.Ltc. v. Etnoori Yadagiri Goud and others) and (ii) Karnataka High Court reported in **2004 ACJ 1289** (Appaji (since deceased) and another v. M.Krishna and another). The first judgment has been rendered by a learned Single Judge of the Andhra Pradesh High Court. It appears that the said judgment has been rendered under the circumstances where the deceased was related to the owner of the vehicle as his brother and the

insurance policy was only confined to the third party. In the second judgment by a Division Bench of the Karnataka High Court, the Court has noticed that Section 163-A of the Act was never intended to provide relief to those who suffered in a road accident not because of the negligence of another person making use of a vehicle but only on account of their own rash, negligent or imprudent act resulting in death or personal injury to them. With great respect to the ratio of the judgment, we would like to take a different view holding that where a case is maintainable under Section 163-A, adducement of evidence on the point of rash and negligent driving is not needed. Therefore, the question of rash, negligent and imprudent act attributable to the driver becomes immaterial. Moreover, in the instant case, the vehicle was covered by a comprehensive policy where owner-cum-driver of the vehicle is also covered with payment of a separate premium.

Further, our view is in line with the provisions of Section 163-A which begins with non-obstante clause and creates a complete exception to all other provisions of the Act. Therefore, the only fact that is to be determined by the Tribunal in a claim petition under Section 163-A is that the death or injury arises out of the use of the motor vehicle, which appears to be in consonance with a finding of Hon'ble the Apex Court in the judgment reported in **1977 ACJ 118 (SC)** (Minu B.Mehta v. Balkrishna Ramchandra Nayan) which has been reproduced in para 10 of Etnoori Yadagiri Goud's case (supra) where the Hon'ble court has noticed that the expression 'liability which may be incurred by him' is meant to cover any liability arising out of the use of the vehicle.

As regards the policy, we have carefully examined it and undisputedly this being a comprehensive policy also covers the owner and driver by way of payment of separate premium.

Hence, we do not find any merit in the submissions of the learned counsel, and thus the FAO does not merit further consideration. Accordingly it is hereby dismissed in limine.

(MAHESH GROVER)
JUDGE

(UMA NATH SINGH)
JUDGE

18.12.2006
dss